

O N A P P E A L

FROM THE FULL COURT OF THE SUPREME COURT OF SOUTH AUSTRALIA

B E T W E E N :

CHRISTOPHER BERNARD THOMPSON (Defendant) Appellant

- and -

KARAN FARAONIO (Plaintiff) Respondent

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CASE FOR THE RESPONDENT

Record

1. This is an appeal pursuant to leave granted by the Full Court of the Supreme Court of South Australia, final leave having been granted on the 13th day of June 1978, from an Order of the Full Court of the Supreme Court of South Australia comprising Bray C.J., Bright, Zelling, Jacobs and King JJ, made on the 19th day of May 1978 upholding a cross appeal by the respondent (the original plaintiff) from that part of the Order of Hogarth J., made on the 7th day of December 1977 as concerned an award of interest to be included in the judgment for the payment of damages to the respondent arising from injuries caused by the appellant's negligent driving of a motor vehicle.

pp 90-93

pp 86-87

pp 22-23

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2. The respondent was injured in a collision between two motor vehicles, on the 11th day of May 1974. In an action commenced by summons in the Local Court of Adelaide on the 1st day of September 1975 and served on the appellant on the 16th day of September 1975, the respondent claimed damages for personal injury against the appellant. The appellant admitted that the accident was due to his negligence. By Order of Walters J. made on the 17th day of September 1976 it was ordered that the proceeding be tried in the Supreme Court of South Australia as if it had been originally commenced therein; that interlocutory judgment be entered for the respondent for damages to be assessed; and that the respondent be at liberty to

pp 1-7

pp 7-9

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Record

- pp 22-23 enter the action for assessment of damages. The action came on for hearing before Hogarth J. on the 14th and 15th days of November 1977 and judgment was delivered on the 7th day of December 1977.
- pp 9-22 3. Hogarth J. assessed the respondent's damages at \$64,698.80 as follows:-
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|--|-------------|----|
| Damages for loss of earning capacity - | | |
| (a) to the 14th day of November 1977 | \$ 7,580.00 | |
| (b) after the 14th day of November 1977 | \$21,500.00 | 10 |
| Household help | 325.00 | |
| Other special damages agreed at | 293.80 | |
| General damages for pain and suffering and loss of amenities | \$35,000.00 | |
| | <hr/> | |
| | \$64,698.80 | |
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- p 23 Hogarth J. awarded interest pursuant to Section 30C of the Supreme Court Act 1935 as amended in the sum of \$3,750.00 (calculated at 10%) and judgment was accordingly entered for the respondent for \$68,448.80 and costs to be taxed. 20
- pp 23-24 The appellant being dissatisfied with the quantum of the assessment of damages appealed by Notice of Appeal dated the 16th day of December 1977 to the Full Court of the Supreme Court of South Australia.
- pp 25-26 The Appeal and Cross Appeal came on for hearing before the Full Court of the Supreme Court of South Australia comprising Bray C.J., Zelling and Jacobs JJ. on the 12th day of April 1978.
- During the course of argument on the Cross Appeal the Full Court of the Supreme Court of South Australia intimated that it proposed referring the Cross Appeal to a specially convened Full Court and reserved judgment on the Appeal. 30
- pp 37-39 4. Judgment in the Appeal was delivered on the 4th day

of May 1978 and the Full Court of the Supreme Court of South Australia allowed the appeal and varied the judgment of Hogarth J. by adjudging that in lieu of the sum of \$64,698.80 the respondent recover from the appellant the sum of \$54,698.80 for damages. It was further ordered that the questions arising on the Cross Appeal as to the award of interest upon the damages recoverable by the respondent be referred for hearing and determination by a Full Court of five Judges of the Full Court of the Supreme Court of South Australia comprising Bray C.J., Bright, Zelling, Jacobs and King JJ. (hereinafter referred to as "the specially convened Full Court") on the 4th day of May 1978.

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5. In his reasons for judgment, Hogarth J. in dealing with the question of interest said :-

"I make an allowance of \$3,750.00 for interest (calculated at 10%)."

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l. 11.

6. The issues before the specially convened Full Court were formulated by counsel and adopted by the Court, as follows:-

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"(a) It is submitted by counsel for the defendant to which counsel for the plaintiff demurs that no interest should run on the sum awarded for future effects of loss of earning capacity;

(b) It is submitted by counsel for the defendant to which counsel for the plaintiff demurs that interest runs from the date of service of proceedings rather than the date of issue of proceedings."

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p 42

7. At the hearing of the Cross Appeal it was agreed by counsel for the purposes of the award of interest pursuant to Section 30C of the Supreme Court Act 1935 as amended:-

(a) that interest runs from either the date of issue of the summons being the 1st day of September 1975 or the date of service of the proceedings, that date agreed as being the 16th day of September 1975;

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(b) that interest runs on damages for loss of past earning capacity, namely, \$7,580.00, damages for

Record

household help, namely, \$325.00 and damages for pain and suffering and loss of amenities assessed by the trial judge at \$35,000.00 but reduced on Appeal to the sum of \$25,000.00;

pp 41-42 (c) that the rate of interest would be at the date of assessment of damages 10%.

8. It was held by the specially convened Full Court that in the circumstances of this case the appropriate date under the issue as defined in paragraph 8(b) (supra) was that of the issue of proceedings, namely, the 1st day of September 1975. 10

9. The legislation in force both at the date of the collision and judgment was section 30C of the Supreme Court Act 1935 as amended, introduced into that Act by the Supreme Court Act Amendment Act 1972 and further amended by the Supreme Court Act Amendment Act 1974.

When sec. 30C was introduced into the Act in 1972 it read for relevant purposes as follows:-

(1) Unless good cause is shown to the contrary, the court shall upon the application of a party in favour of whom a judgment for the payment of damages, compensation or any other pecuniary amount has been, or is to be, pronounced, include in the judgment an award of interest in favour of the judgment creditor in accordance with the provisions of this section. 20

(2) The interest -

(a) shall be at the rate of seven per centum per annum or such lower rate as may be fixed by the court; 30

(b) shall be calculated -

(i) where the judgment is given upon an unliquidated claim - from the date of commencement of the proceedings to the date of judgment;

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or in respect of such other period as may be fixed by the court;

and

(c) shall be payable in respect of the whole 40

or any part of the amount for which judgment is given in accordance with the determination of the court.

- (3) No interest shall be awarded in respect of -
- (a) damages or compensation in respect of loss or injury to be incurred or suffered after the date of the judgment;
 - (b) exemplary or punitive damages.

- 10 (4) This section does not -

(here follows several exclusions not relevant to the present case).

In 1974 the section was amended. Subsection (1) remained unaltered. There is a new subsection (2) (a) in place of the old. This provides that interest should be at such rate as may be fixed by the court. The old subsection (3) was repealed and a new subsection (3) substituted in the following words:

- 20 (3) Where a party to any proceedings before the Court is entitled to an award of interest under this section, the Court may, in the exercise of its discretion, and without proceeding to calculate the interest to which that party may be entitled in accordance with subsection (2) of this section, award a lump sum in lieu of that interest. Subsection (4) was amended so as to include amongst the
- 30 matters on which interest was not authorised exemplary or punitive damages.

10. This appeal relates to a question of law only. The question so raised is whether or not the Full Court of the Supreme Court of South Australia was correct in deciding that pursuant to Section 30C of the Supreme Court Act 1935 as amended, an amount of interest can be awarded in respect of damages for personal injury in so far as they relate to future effects of loss of earning capacity.

11. As regards the question to be determined upon this appeal the respondent respectfully submits as follows:-

- 40 (1) Section 30C of the Supreme Court Act 1935 as

Record

amended clearly contemplates that interest may be awarded on the whole of the amount of the judgment. If future elements, and in particular loss of earning capacity in the future, have always to be excluded as interest-bearing components then it will be very rarely that interest can be given on the whole of the damages in a personal injuries claim, since such damages nearly always include some future elements. If future elements have always to be excluded, the whole of the damages could never carry interest in personal injury cases except in the rare case of the plaintiff having made a complete recovery before judgment;

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- (2) the traditional theory of the law in Australia in respect of damages for personal injury is that the loss of earning capacity and the detrimental personal consequences of physical and psychological harm are suffered once and for all on the happening of the event which causes the injury.

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(Ruby v. Marsh 132 CLR 642, especially per Barwick C.J., at pp 648 and 658, per Stephen J. at p. 662 and per Jacobs J. at p. 667;

Atlas Tiles Limited v. Briers: unreported decision of the High Court of Australia, judgment delivered on 5th October 1978).

- (3) In respect of the question of interest, there is no reason to distinguish between damages for loss of earning capacity and damages for pain and suffering;
- (4) theoretically, at least, a successful plaintiff should be paid out at the date of the issue of proceedings and if not, he has been kept out of his money from that date;
- (5) Section 30C confers on the Court a number of wide discretions. There is no reason why interest should not be allowed on the whole of the award of general damages, at least for the whole period from the commencement of the proceedings to judgment;
- (6) the effect of inflation does not make it unjust that interest should be allowed on the future

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elements of the award for the reasons expounded by Bray C.J. and recorded in the Record, which are respectfully adopted by the respondent.

Record

p 50

(7) if a plaintiff is treated as an investor for the purpose of calculating the capital sum, but as a wage-earner for the purpose of depriving him of interest thereon, the plaintiff suffers injustice. In support of this proposition, the respondent respectfully adopts the observations of Zelling J. as recorded in the Record.

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p 71

(8) in all other respects, the respondent respectfully adopts the conclusion reached by all members comprising the specially convened Full Court.

12. The respondent respectfully submits that their Lordships humbly advise her Majesty that this Appeal be dismissed.

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THOMAS A. GRAY

IN THE PRIVY COUNCIL

No. 29 of 1978

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- and -

KARAN FARAONIO (Plaintiff)
Respondent

CASE FOR THE RESPONDENT

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